

CHAPTER 19
CLASSIFICATION AND PREQUALIFICATION
OF FIRMS

Authority

N.J.S.A. 52:35-1 et seq.

Source and Effective Date

R.2003 d.252, effective June 1, 2003.
See: 35 N.J.R. 1701(a), 35 N.J.R. 2881(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 19, Classification and Prequalification of Firms, expires on November 28, 2008. See: 40 N.J.R. 3959(a).

Chapter Historical Note

Chapter 19, Rules Governing the Classification and Qualification of Bidders, was adopted as R.1970 d.91, effective July 31, 1970. See: 2 N.J.R. 57(c), 2 N.J.R. 78(b).

Pursuant to Executive Order No. 66(1978), Chapter 19, Rules Governing the Classification and Qualification of Bidders, was readopted as R.1990 d.193, effective March 8, 1990. See: 22 N.J.R. 329(b), 22 N.J.R. 1150(b).

Chapter 19, Rules Governing the Classification and Qualification of Bidders, was repealed and Chapter 19, Classification and Qualification of Bidders, was adopted as new rules by R.1995 d.90, effective February 21, 1995, operative March 23, 1995. See: 26 N.J.R. 4747(b), 27 N.J.R. 755(a).

Pursuant to Executive Order No. 66(1978), Chapter 19, Classification and Qualification of Bidders, was readopted as R.2000 d.76, effective January 28, 2000. See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Chapter 19, Classification and Qualification of Bidders, was repealed and Chapter 19, Classification and Prequalification of Firms, was adopted as emergency new rules by R.2003 d.171, effective April 2, 2003 (to expire June 1, 2003). See: 35 N.J.R. 1701(a).

Chapter 19, Classification and Qualification of Firms, was adopted as new rules by R.2003 d.252, effective June 1, 2003. See: Source and Effective Date.

Law Review and Journal Commentaries

Battle for state contracts: What process is due in a challenge to a state contract award? Patrick D. Kennedy & Maeve E. Cannon, 180 N.J.Law. 16 (Mag.) (Oct./Nov. 1996).

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SUBCHAPTER 1. GENERAL PROVISIONS

17:19-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Affiliates” or “related parties” means firms and/or persons having an overt or covert relationship such that any one of them directly or indirectly controls or has power to control another.

“Agency of government” means any Federal, State, regional, county or local government agency, in this or any other state, including any department, division, commission, authority, office, branch, section and political subdivision or other governmental or quasi-governmental entity.

“Classification” means the process and product of assigning specific construction categories or trades and the aggregate ratings which define the eligibility of firms to engage in public work as determined by the Division of Property Management and Construction in the Department of the Treasury in accordance with this chapter.

“Debarment” means an exclusion from public work contracting for a definite period of time.

“Deputy Director” means a Deputy Director of the Division of Property Management and Construction in the Department of the Treasury or the Deputy Director’s duly authorized representative.

“Director” means the Director of the Division of Property Management and Construction in the Department of the Treasury or the Director’s duly authorized representative.

“Disqualification” means exclusion from public work contracting until specific conditions or requirements are satisfied or denial or revocation of the opportunity to bid on or engage in a particular public work contract.

“DPMC” means the Division of Property Management and Construction in the Department of the Treasury.

“DPMC 27” means the request for classification form to be submitted by a firm seeking classification.

“Firm” means any company, firm, sole proprietorship, partnership, association, corporation, joint stock company, limited liability company, or other business entity and their lessees, trustees, assignees or receivers.

“Public work” means any public building or other public betterment or improvement constructed, repair or improved wholly or in part at the expense of any agency of government required or permitted to use DPMC’s classification of contractors.

“Significant project” means a project equal to or greater than the average dollar value of completed projects for the previous two years. These projects may be public projects, private projects, or a combination of the two.

“State” means the State of New Jersey, or any of the departments or agencies in the executive branch of government with the lawful authority to engage in contracting.

“Suspension” means an exclusion from public work contracting for a period of time, pending the completion of an investigation, legal proceedings or administrative proceedings.

Amended by R.2000 d.76, effective February 22, 2000.

See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Inserted “Affiliate” or “related party”, “Agency of government” and “Division”; in “Director”, substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction; in “Person”, substituted a reference to partnerships for a reference to copartnerships; and rewrote “Questionnaire” as “Request for Classification or Questionnaire”.

SUBCHAPTER 2. RULES

17:19-2.1 Statements required from firms requesting classification

(a) Only those firms holding a valid classification issued by DPMC shall be eligible to bid for work on a public work project, unless otherwise permitted by law. In addition, no bid proposal for a public work project shall be accepted unless every subcontractor that is required by law, the bid advertisement, or the bid documents, to be named in the bid proposal holds a valid classification issued by DPMC. Said classification and rating must be valid on the bid due date for the project.

(b) Each DPMC-27 shall be completed in its entirety and all questions must be answered and all requested information must be provided. Incomplete submissions will not be processed by DPMC. All financial statements shall conform with generally accepted accounting principles and be completed by either a certified public accountant (CPA) or public accountant, pursuant to N.J.S.A. 45:2B-42 et seq., who is independent of and not an employee of the firm for which the financial statements are being provided. Information required by the DPMC-27 includes:

1. A financial statement, which may be a certified audited statement, review statement, or compilation of statements, depending upon the aggregate rating being sought by the firm. The firm must submit its most recent financial statement, which shall not be more than 12 months old. The financial statement shall include a cover letter signed by the public accountant or CPA who prepared the document. The financial statement shall include at a minimum a balance sheet, related statements of income and retained earnings and cash flows and notes to financial statements in complete detail and shall comprise at least a six-month accounting cycle. The certified audited financial statements shall have an unqualified opinion.

- i. Submission of a compilation of financial statements will limit a firm’s maximum aggregate rating to not more than \$5,000,000.

- ii. Submission of a CPA review of financial statements will limit a firm’s maximum aggregate rating to not more than \$15,000,000.

- iii. Submission of a CPA’s certified audited financial statement will be required for aggregate ratings exceeding \$15,000,000.

iv. Submission of combined or consolidated statements is not acceptable, unless complete supplementary (combining or consolidating) information is included within the report. This information shall be of such detail as to show the financial condition of the particular firm seeking classification;

2. A statement as to organization, which shall demonstrate the adequacy of the firm (officers, key management personnel, physical plant and equipment) to undertake a project in the classification(s) requested. A current listing of non-supervisory personnel must also be provided. If the firm uses trades and/or employees from a leasing company, such company must be registered in conformance with N.J.S.A. 34:8-67 et seq. A copy of the leasing agreement and New Jersey Department of Labor Registration of the leasing company must be included;

3. A statement as to prior experience, which shall show the number of years that the firm has been engaged in the contracting business and shall further disclose the firm's experience over that period. In no instance shall a firm with less than one year of such experience be classified, unless the firm demonstrates that its principals have at least five years of experience in each trade for which the firm is seeking classification, in which case the aggregate rating shall not exceed \$500,000. The firm shall indicate the number of years of construction experience that the firm has had by trade, as a prime contractor and as a subcontractor. In such statement, the firm may show the experience of officers, managers and key personnel;

4. A statement as to the past performance and project experience, which shall give an accurate and complete record of work completed in the past five years by the firm (not by subcontractors or individuals employed by others) giving the names of each project, type of work, location, contract price and the names of the owner and of the architect/engineer in charge for the owner. At least two significant projects that have been completed must be described for each trade requested. A copy of contracts for the completed significant projects must be provided;

5. A statement that the firm has adopted or will comply with an Affirmative Action Program for Equal Opportunity in accordance with applicable New Jersey and Federal laws, rules and regulations;

6. A statement of the firm's bonding capacity, as required by N.J.A.C. 17:19-2.9, which shall be from a surety authorized to issue bid, performance and payment bonds in the State pursuant to N.J.S.A. 2A:44-143;

7. A statement setting forth the names and addresses of all stockholders, partners or members owning a 10 percent or greater interest in the firm. If one or more stockholders, partners or members are a corporation, partnership or limited liability company owning a 10 percent or greater interest in the firm, the statement shall also set forth the names and addresses of all stockholders, partners or members owning a 10 percent or greater

interest in that corporation, partnership or limited liability company. Disclosure of the names and addresses of all stockholders, partners or members owning a 10 percent or greater interest shall continue at each level of ownership until all stockholders, partners or members owning a 10 percent or more interest have been disclosed; and

8. A statement setting forth any other pertinent material and facts that will justify the classification requested by the firm.

(c) All foreign corporations shall include a current certificate of authority to transact business in New Jersey, as issued by the Secretary of State, pursuant to N.J.S.A. 14A:13-1 et seq.

Amended by R.2000 d.76, effective February 22, 2000.

See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a) and (b), substituted references to PMC-27 for references to GSA-27 and substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout; in (b)1. rewrote the introductory paragraph and i; in (b)4, inserted a reference to terminations in the second sentence, and inserted a reference to Department of Labor wage requirements in the third sentence; rewrote (b)7; and in (c), substituted a reference to the Department of Treasury for a reference to the Department of State.

17:19-2.2 Fraudulent statements

A firm or an individual who makes, or causes to be made, a false, deceptive or fraudulent statement in the DPMC-27 or any other submission required in conjunction with a request for classification or in the course of any hearing under this chapter may, at the discretion of the Director, be disqualified from bidding, suspended and/or debarred in accordance with this chapter and may be subject to prosecution pursuant to applicable laws.

Amended by R.2000 d.76, effective February 22, 2000.

See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (b), substituted a reference to PMC-27 for a reference to GSA-27, and added "and pursue any recourse under N.J.A.C. 17:19-3 and 4" at the end.

17:19-2.3 Joint venture statement (DPMC projects only)

(a) Where two or more firms each with a valid classification and rating for the same trade category, propose to form a joint venture for purposes of bidding on a DPMC project, the firms shall jointly submit a Statement of Joint Venture Form (DPMC 606) to DPMC, which shall:

1. Be provided to DPMC by the joint venture no less than five business days before the bid due date set for the project on which they proposed to bid;
2. State the classifications of the individual firms;
3. Describe the purpose, structure and resources of the joint venture, and be supplemented by any other information requested by DPMC;
4. Include a statement from a surety authorized to issue payment and performance bonds in the State of the

bonding capacities of the individual firms and the bonding capacity of the joint venture; and

5. Be signed by all of the firms comprising the joint venture.

(b) In no event shall a joint venture's aggregate rating exceed the combined total of the individual firms' aggregate ratings. However, if the joint venture's combined aggregate rating exceeds \$200,000,000, the joint venture may be deemed unlimited.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a) and (b), substituted references to PMC-606 for references to DBC 606; and in (a)1. substituted "days, excluding weekends and/or legal holidays." for "calendar or work days" following "five".

17:19-2.4 Responsibility determination

(a) DPMC shall not classify a firm without first making an affirmative finding that the firm is responsible. A firm has the burden of proving to DPMC that the firm is responsible.

(b) Responsibility will be determined based on criteria that include:

1. Financial resources;
2. Technical qualifications;
3. Experience;
4. Organization, facilities, personnel and other such resources;
5. Contract performance record;
6. Accounting and auditing submissions and practices;
7. Equal employment opportunity and affirmative action record;
8. Record of integrity;
9. Safety record; and
10. Other factors deemed relevant by DPMC.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a) and (c), substituted references to the DPMC for references to the DBC throughout: in (a), substituted a reference to PMC-27 for a reference to GSA-27, and substituted a reference to standardized forms entitled "Surety Affidavit" for a reference to standardized forms; and in (b), substituted a reference to \$200,000 for a reference to \$100,000.

17:19-2.5 Performance ratings

(a) For any firm proposing to submit bids on public work requiring DPMC classification, a performance rating shall be determined. The rating shall be calculated pursuant to the following provisions:

1. For any firm that has no prior public work experience with the State, the performance rating shall be based on an evaluation of the firm's references and past experience, as identified in the firm's DPMC-27.

2. For any firm that has prior public work experience with the State, a performance rating shall be based on the project evaluations submitted by the firm to DPMC and project evaluations supplied to DPMC by any State agency, to the extent that the evaluations comply with the following criteria:

i. A project evaluation shall be made for each of the prime contractors on a public work project. The project evaluation shall be made by no less than two persons directly involved in the management, supervision or inspection of the project;

ii. Project evaluations shall be presented on a standardized performance evaluation form approved by DPMC; and

iii. Another evaluation will be based on the following factors:

- (1) Quality of work;
- (2) Scheduling;
- (3) Management;
- (4) Cost control/change orders;
- (5) Safety/industrial hygiene;
- (6) Subcontractors; and
- (7) Close-out;

iv. Interim evaluations on incomplete projects may be included in the performance rating at the time of classification.

3. A firm's project performance rating shall be calculated as the average of the final project evaluations for the past five years.

(b) A firm's challenge to a project evaluation shall not be conducted as part of the classification process but must proceed pursuant to N.J.A.C. 17:19-4.2(a)3.

(c) The Director may establish special evaluation criteria for certain projects.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a) and (c), substituted references to the DPMC for references to the DBC; and in (b), rewrote the introductory paragraph.
Amended by R.2003 d.252, effective June 1, 2003, change upon adoption effective July 7, 2003.

See: 35 N.J.R. 1701(a), 35 N.J.R. 2881(a).
In (b), amended N.J.A.C. reference.

17:19-2.6 Firms to be classified

(a) Upon receipt of the completed DPMC-27, DPMC will begin to process the application and shall determine if the firm is entitled to a classification in any trade and an aggregate rating. Classification will be based on the information contained in the DPMC-27 and on the firm's performance rating.

(b) Firms shall reclassify every 18 months in order to remain eligible to bid on public work. A firm must submit a new DPMC-27 to DPMC before the expiration date of the current classification. If a firm fails to timely submit a complete renewal application, the firm's classification will expire. The classification renewal will be effective as of the date shown on the classification notice by DPMC. The classification renewal will expire 18 months from the effective date shown on the classification notice by DPMC.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (b), substituted a reference to PMC-27 for a reference to GSA-27; and rewrote (c)2 and (f).

Case Notes

School board is to determine job classification. *Bil Jim Const. Co., Inc. v. Manchester Tp. Bd. of Educ.*, 236 N.J.Super. 603, 566 A.2d 585 (L.1989).

Court will determine adequacy of public contract specifications. *Bil Jim Const. Co., Inc. v. Manchester Tp. Bd. of Educ.*, 236 N.J.Super. 603, 566 A.2d 585 (L.1989).

Contract award was vacated where specifications omitted information and allowed school board discretion to supply it after bids were opened. *Bil Jim Const. Co., Inc. v. Manchester Tp. Bd. of Educ.*, 236 N.J.Super. 603, 566 A.2d 585 (L.1989).

17:19-2.7 Trade classifications

(a) To be classified for a given trade, a firm must have successfully completed at least two significant projects in that trade within the previous five years. A firm must submit with its DPMC-27 a contract document that identifies the following information: an actual dated signature page; the dollar amount of the contract; the scope of work; and contact names of the owner, the design professional(s) and/or the construction manager.

(b) The trades for which an applicant may request classifications are as listed on the DPMC-27.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a) and (d), substituted references to PMC-27 for references to GSA-27 throughout; rewrote (b) and (c); and in (d), inserted "or any of the factors described in N.J.A.C. 17:19-2.5(b)" at the end of the introductory paragraph, and substituted a reference to the DPMC for a reference to the DBC in 2.

Case Notes

Unsuccessful bidder's omission of prequalification affidavit in bid for contract to add to and alter a school was a waivable, immaterial defect. *Tec Elec., Inc. v. Franklin Lakes Bd. of Educ.*, 284 N.J.Super. 480, 665 A.2d 803 (L.1995).

17:19-2.8 Aggregate rating

(a) A firm's aggregate rating is the limit of the dollar value of all contracts, public and private, which the firm may perform at any given time. The aggregate rating shall be based on the following factors:

1. The firm's working capital reported in its financial statement;
2. The firm's performance rating, as described in N.J.A.C. 17:19-2.5;
3. The firm's bonding capacity, as described in N.J.A.C. 17:19-2.9;
4. The firm's prevailing wage violation record, as described in N.J.A.C. 17:19-2.8(c); and
5. All other factors, as described in N.J.A.C. 17:19-2.4(b).

(b) Working capital shall be determined according to generally accepted accounting principles (defined as current assets minus current liabilities), but shall not include:

1. Any assets not in the name of the firm;
2. Any past due accounts exceeding one year;
3. Any fixed assets, including, but not limited to, buildings, land or furniture;
4. Any assets not realizable within one year;
5. Securities that have been pledged; and
6. Any line of credit: The exception to this deduction is a working capital line of credit issued by a certified lending institution. The line of credit must be solely used for the purposes of the business as it relates to construction contracting. A copy of all pertinent lending covenants and agreements must be attached to the financial statement, along with a full explanation of all outstanding liabilities as of the date of the notarized certification on the DPMC-27 against the line of credit. If the line of credit meets the above criteria, 100 percent of the unused line will be added to the working capital calculation.

(c) If a firm has been adjudicated to have committed a prevailing wage violation in a three-year period before the receipt of the DPMC-27, the working capital calculation shall be reduced by 25 percent.

(d) The firm's aggregate rating shall be calculated as follows:

1. Multiply the firm's working capital according to the following table:

<u>Working Capital</u>	<u>Asset Multiplier</u>
1 to \$500,000	12
\$500,001 to \$1,500,000	14
\$1,500,001 to \$3,000,000	16
\$3,000,001 or higher	18

2. Multiply the result of this calculation by the performance multiplier based upon at least three projects completed in the last five years.

Average Performance Evaluations (APE)	Performance Multiplier
80.0 percent or higher	1.00
70.0 percent to 79.9 percent	0.50
69.9 percent or lower	0.25

EXAMPLES: The following examples show the effect of a performance multiplier for a firm having (1) an APE of 80.0 percent or higher and (2) an APE of 70.0 percent to 79.9 percent.

A = Working Capital

B = Asset Multiplier

C = Preliminary Aggregate Rating

D = Performance Multiplier

E = Aggregate Rating

(Formula) $A \times B = C$ and $C \times D = E$

1. $\$85,000 \times 12 = \$1,020,000 \times 1.00 = \$1,020,000$

2. $\$85,000 \times 12 = \$1,020,000 \times 0.50 = \$510,000$

3. If a firm has not received a State performance evaluation, a performance multiplier will be based upon information received by DPMC during the review of project references.

4. When the firm's APE is less than 69.9 percent, the Director may reject the application or assign an aggregate rating less than that provided for in this section, based on all factors relevant to the firm's ability to perform.

Amended by R.2000 d.76, effective February 22, 2000.

See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), rewrote the last sentence; and in (b), substituted a reference to PMC-27 for a reference to GSA-27.

17:19-2.9 Bonding capacity

(a) A firm proposing to submit bids on a public work project which requires a performance bond or a payment bond, or both, shall submit as part of its DPMC-27 a certified statement of the firm's bonding capacity. The statement shall be contained on the standardized form entitled "Surety Affidavit," provided by DPMC, and shall be from a surety authorized to issue bid bonds and performance and payment bonds in the State.

(b) If the aggregate rating is equal to or greater than 85 percent of the firm's bonding capacity, and if the surety attesting to the firm's bonding capacity is listed in Treasury Circular 570 with a high rating as defined in N.J.S.A. 2A:44-143, the firm shall be issued an aggregate rating equal to its bonding capacity.

(c) A firm which does not provide a statement of bonding capacity from an authorized surety shall receive an aggregate rating of not more than \$200,000 and shall not be eligible to bid on any projects for which a bond is necessary, but may be eligible to bid on any project for which a bond is not required, within the firm's aggregate rating limit. In no event shall a firm's aggregate rating exceed the firm's bonding capacity, except that if the aggregate rating is equal to or greater than \$200,000,000, the firm shall be issued an unlimited aggregate rating.

Amended by R.2000 d.76, effective February 22, 2000.

See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted a reference to the following factors for a reference to three factors in the introductory paragraph, and added 4 and 5; in (b), inserted "exceeding 90 days" at the end of 3, deleted a reference to officers, employees, etc. in 8, and added 9 and 10; and in (d), substituted "69.9 percent to 65 percent" for "69.9 percent or lower" in the table in 2, substituted a reference to the DPMC for a reference to the DBC in 3, substituted a reference to \$200,000 for a reference to \$100,000 in 4, and substituted a reference to 65 percent for a reference to 0.25 in 5.

17:19-2.10 Special classification requirements

(a) As may be dictated by the unique, specialized nature, or scope of the work to be performed on a project, the Director may establish special classification requirements for a given project.

(b) The Director may establish special classification requirements for a given trade classification in order to ensure that firms which have been classified conform with the latest technical or safety developments in that trade. DPMC shall provide notice of any such special requirements to all previously classified firms via direct mail, electronically and/or by publication in major State newspapers and trade journals.

17:19-2.11 Effective dates of classifications and ratings

(a) A classification or rating resulting from the filing of an original application or a renewal application shall be determined and effective eight business days after receipt by DPMC of all required information except as follows:

1. If a firm which has submitted an application for a classification or a rating fails to fully respond to DPMC within eight business days after receiving a request from DPMC for information regarding that application, the firm will be deemed to have withdrawn its request for classification.

2. If DPMC notifies a firm within eight business days after DPMC's receipt of all required information that the firm's application requires further review and identifies the reasons for further review, the application will not be deemed to have been approved or denied until DPMC expressly notifies the firm.

(b) A firm must have a valid classification and rating appropriate to any project on which the firm may bid, or under which a firm will be designated as a subcontractor in a principal trade, as provided in N.J.S.A. 52:32-2, or if the contract documents require the trade to be classified.

Amended by R.2000 d.76, effective February 22, 2000.

See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted a reference to PMC-27 for a reference to GSA-27; and in (c), substituted a reference to the DPMC for a reference to the DBC.

17:19-2.12 Classification change

(a) A firm shall notify DPMC in writing during a classification period, when the financial, bonding and/or corporate status of a firm changes substantially as to warrant a change of classification or rating. The firm shall provide said notice to DPMC within 10 days of the change(s) and shall submit a revised DPMC-27, or applicable portions thereof, as required. Examples of substantial change include, but are not limited to, insolvency, decreases in bonding capacity, changes in ownership, or any of the factors affecting the firm's responsibility, as described in N.J.A.C. 17:19-2.4(b).

(b) A firm may request an increase in its aggregate rating for the remainder of the firm's existing classification period by submitting to DPMC an updated financial statement for a period of at least six months from the ending date of the financial statement submitted with the prior DPMC-27 in conformance with the provisions found in N.J.A.C. 17:19-2.1(b). However, a firm that has an aggregate rating of more than \$15,000,000 may request an increase in its aggregate rating by submitting a CPA reviewed financial statement.

(c) DPMC shall review all submissions in accordance with this section and issue a decision no later than the 20 business days from the date of the firm's submission. Any change of classification shall be effective only for the remainder of the original classification period.

Amended by R.2000 d.76, effective February 22, 2000.

See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), added the last sentence.

Case Notes

Bidder that acted in good faith in calculating work on hand by cost-to-complete method and complying with aggregate rating limit was not precluded from proving after the fact that it qualified, based on clear and convincing evidence that outstanding balance of contracts would be within aggregate limit by bid project's scheduled start date. In re DBC Project No. A0716-00. 303 N.J.Super. 384, 697 A.2d 131 (A.D. 1997).

17:19-2.13 Award of contracts exceeding aggregate rating

(a) A firm shall include with each bid a statement of the current value and status of its backlog of uncompleted construction work (not to include "non-at-risk" construction management contracts) as of the bid due date and a certification that the award of the subject contract would not cause the firm to exceed its aggregate rating.

(b) If at the time of a bid opening a question arises as to whether a bid for a project is within a firm's existing classification or aggregate rating, the bid shall be opened, and if the bid is at variance with the firm's trade classification or aggregate rating, the bid shall be rejected.

(c) A firm shall not be awarded a contract which, when added to the backlog of uncompleted construction work, as shown on Form DPMC 701, would exceed the firm's aggregate rating. The backlog of uncompleted construction work shall be the total contract value of unbilled work, as evi-

denced by the most recent approved invoice (or other similar documentation) received by the bidder before or on the date of the bid. The firm may deduct 85 percent of the total contract value of the work performed by principal trades, as described in (e) below, on such uncompleted work.

(d) If a firm successfully bids for two or more contracts which, either in combination with each other or in combination with the backlog of uncompleted construction work on other currently held contracts would exceed the firm's aggregate rating, the firm shall be awarded only those contracts which in combination fall within the firm's aggregate rating, as follows:

1. Contracts shall be considered in the chronological order of the bid due dates.

2. Where a given contract award would exceed the firm's aggregate rating, the firm shall not be eligible for that award.

3. However, if a firm provides with its bid clear and convincing evidence that its outstanding balance of contracts will be within its aggregate rating by the time the bid project is scheduled to begin, the Director may determine to accept the bid if it is in the best interest of the State.

(e) On any project where a firm is awarded a single prime contract which encompasses work to be performed by a subcontractor in a principal trade, as defined in N.J.S.A. 52:32-2, including plumbing and gas fitting, steam and hot water heating and ventilation, electrical, structural steel and ornamental iron work, and general construction, and where the work to be performed by the subcontractors is specifically identified in the bid, the firm shall calculate the value of the awarded contract (for purposes of determining how much the contract will contribute toward determining the firm's backlog) by deducting 85 percent of the actual subcontract price of the work to be performed by principal trades from the actual price of the contract awarded to it. The firm will have the burden of proving that the work is encompassed by the principal trades and the value of the amount of the work performed by those principal trades.

Case Notes

Township board of education's award of school construction contract to lowest bidder was proper, although second lowest bidder challenged award alleging lowest bidder was disqualified because lowest bidder's base bid plus 52 alternates on which it was originally required to bid was beyond its aggregate rating, where lowest bidder's base bid was within its aggregate rating, and value of contract awarded, including some but not all alternates, was also within its aggregate rating. Seacoast Builders Corp. v. Jackson Tp. Bd. of Educ., 363 N.J.Super. 373, 833 A.2d 84.

For purposes of bidding for governmental contracts, where the bid specifications call for discretionary alternates, the totality of concerns underlying the public bidding laws is best accommodated, consistent with regulation governing preclassification aggregate rating of bidders, by permitting a prospective bidder to submit his bid if the base bid, rather than base bid plus total alternates bid, comports with its aggre-

gate rating. *Seacoast Builders Corp. v. Jackson Tp. Bd. of Educ.*, 363 N.J.Super. 373, 833 A.2d 84.

Under administrative regulation governing classification and prequalification of bidders for governmental contracts, which requires aggregate rating compliance both at time of bidding and at time of award, bidders' aggregate rating compliance at the time of the bid is to be determined based on the base bid, and bidders' aggregate rating compliance at the time of the award is to be determined based on the actual contract value; this technique best serves the public interest in the enforcement of the policies and objectives of the public bidding laws. *Seacoast Builders Corp. v. Jackson Tp. Bd. of Educ.*, 363 N.J.Super. 373, 833 A.2d 84.

SUBCHAPTER 3. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF FIRM(S) AND INDIVIDUAL(S)

17:19-3.1 Causes for debarment of a firm(s) or an individual(s)

(a) In the public interest, DPMC may debar a firm or an individual for any of the following causes:

1. Commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;
2. Civil or criminal violation of the Federal Organized Crime Control Act of 1970 or the New Jersey Racketeer Influenced and Corrupt Organizations Act, N.J.S.A. 2C:41-1 et seq., or the commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty;
3. Violations of the Federal or any state antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. § 874, 40 U.S.C. § 276c);
4. Violations of any of the laws governing the conduct of elections of the Federal government, any state or its political subdivisions;
5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public work employment (N.J.S.A. 10:2-1 et seq.), or of the act prohibiting discrimination by industries engaged in defense work in the employment of individuals therein (P.L. 1942, c.114, N.J.S.A. 10:1-10 et seq.);
6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages or child labor;
7. Violations of any laws governing the conduct of occupations or professions or regulated industries;
8. Violations of any Federal or state laws that may bear upon a lack of responsibility or moral integrity;

9. Willful failure to perform in accordance with contract specifications or within contractual time limits;

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the firm or the individual debarred;

11. Violation of contractual or statutory provisions regulating contingent fees;

12. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by DPMC to warrant debarment, including such conduct as may be prescribed by the laws or contracts enumerated in this section even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

13. Debarment or disqualification by any other agency of government;

14. Making any offer or agreement to pay or make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee of an agency of government with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee of an agency of government, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to immediately report to the Attorney General and to the Executive Commission on Ethical Standards in writing the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any officer or employee of any State agency of government or special State officer or employee as defined by N.J.S.A. 52:13D-13;

16. Failure by a vendor to immediately report in writing, or obtain a waiver from the Executive Commission on Ethical Standards for, the direct or indirect undertaking of any private business, commercial or entrepreneurial relationship (including the selling of any interest in such vendor), regardless of whether the relationship is pursuant to employment, contract or other agreement, express or implied, with the following:

- i. Any State officer or employee of any State agency of government or special State officer or employee as defined by N.J.S.A. 52:13D-13, having duties or responsibilities connected with the purchase, acquisition or sale of any property or services by or to any State agency of government or any instrumentality thereof; or

gate rating. *Seacoast Builders Corp. v. Jackson Tp. Bd. of Educ.*, 363 N.J.Super. 373, 833 A.2d 84.

Under administrative regulation governing classification and prequalification of bidders for governmental contracts, which requires aggregate rating compliance both at time of bidding and at time of award, bidders' aggregate rating compliance at the time of the bid is to be determined based on the base bid, and bidders' aggregate rating compliance at the time of the award is to be determined based on the actual contract value; this technique best serves the public interest in the enforcement of the policies and objectives of the public bidding laws. *Seacoast Builders Corp. v. Jackson Tp. Bd. of Educ.*, 363 N.J.Super. 373, 833 A.2d 84.

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(a) In the public interest, DPMC may debar a firm or an individual for any of the following causes:

1. Commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;
2. Civil or criminal violation of the Federal Organized Crime Control Act of 1970 or the New Jersey Racketeer Influenced and Corrupt Organizations Act, N.J.S.A. 2C:41-1 et seq., or the commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty;
3. Violations of the Federal or any state antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. § 874, 40 U.S.C. § 276c);
4. Violations of any of the laws governing the conduct of elections of the Federal government, any state or its political subdivisions;
5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public work employment (N.J.S.A. 10:2-1 et seq.), or of the act prohibiting discrimination by industries engaged in defense work in the employment of individuals therein (P.L. 1942, c.114, N.J.S.A. 10:1-10 et seq.);
6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages or child labor;
7. Violations of any laws governing the conduct of occupations or professions or regulated industries;
8. Violations of any Federal or state laws that may bear upon a lack of responsibility or moral integrity;

9. Willful failure to perform in accordance with contract specifications or within contractual time limits;

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the firm or the individual debarred;

11. Violation of contractual or statutory provisions regulating contingent fees;

12. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by DPMC to warrant debarment, including such conduct as may be prescribed by the laws or contracts enumerated in this section even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

13. Debarment or disqualification by any other agency of government;

14. Making any offer or agreement to pay or make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee of an agency of government with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee of an agency of government, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to immediately report to the Attorney General and to the Executive Commission on Ethical Standards in writing the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any officer or employee of any State agency of government or special State officer or employee as defined by N.J.S.A. 52:13D-13;

16. Failure by a vendor to immediately report in writing, or obtain a waiver from the Executive Commission on Ethical Standards for, the direct or indirect undertaking of any private business, commercial or entrepreneurial relationship (including the selling of any interest in such vendor), regardless of whether the relationship is pursuant to employment, contract or other agreement, express or implied, with the following:

- i. Any State officer or employee of any State agency of government or special State officer or employee as defined by N.J.S.A. 52:13D-13, having duties or responsibilities connected with the purchase, acquisition or sale of any property or services by or to any State agency of government or any instrumentality thereof; or

ii. Any firm or entity with which the State officer or employee of an State agency of government is employed or associated or has an interest in within the meaning of N.J.S.A. 52:13D-13g;

17. Influencing or attempting to influence or cause to be influenced, any officer or employee of any agency of government, in that officer's or employee's official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

18. Causing or influencing or attempting to cause or influence, any State officer or employee of any State agency of government or special State officer or employee as defined by N.J.S.A. 52:13D-13, to use, or attempt to use, that officer or employee's official position to secure unwarranted privileges or advantages for the vendor or any other firm or individual; and/or

19. Agreeing with any agency of government to refrain from bidding on public works projects for reasons that, in the discretion of the Director, warrant debarment.

Amended by R.2000 d.76, effective February 22, 2000.

See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Substituted references to the DPMC for references to the DBC throughout; deleted "DBC contracting"; inserted "DPMC contracting"; and rewrote "Person".

17:19-3.2 Conditions affecting the debarment of a firm(s) or an individual(s)

(a) The following conditions apply to debarment:

1. Debarment shall be made only upon approval of the Director, except as otherwise provided by law.

2. The existence of any of the causes set forth in N.J.A.C. 17:19-3.1 shall not necessarily require that a firm or an individual be debarred. In each instance, the decision to debar shall be made within the discretion of the Director, unless otherwise required by law, and shall be rendered in the best interests of the State.

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted.

4. The existence of a cause set forth in N.J.A.C. 17:19-3.1(a)1 through 8 shall be established upon the rendering of a final judgment or judgment of conviction or a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the written request of the debarred firm or individual, unless other cause for debarment exists.

5. The existence of a cause set forth in N.J.A.C. 17:19-3.1(a)9 through 12 shall be established by evidence that the Director determines to be clear and convincing in nature.

6. Debarment for the cause set forth in N.J.A.C. 17:19-3.1(a)13 shall be proper, provided that one of the causes set forth in N.J.A.C. 17:19-3.1(a)1 through 12 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on record of facts obtained by the original debarring agency.

Amended by R.2000 d.76, effective February 22, 2000.

See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction in the introductory paragraph and 12, and inserted "of any state or Federal government" at the end of 13.

17:19-3.3 Procedures, period(s) of debarment and scope of debarment affecting the debarment of a firm(s) or an individual(s)

(a) The procedures, period of debarment and scope of debarment include the following:

1. When DPMC seeks to debar a firm or an individual, DPMC shall furnish to such firm or individual written notice: stating that debarment is being considered; setting

forth the reasons for the proposed debarment; and indicating that such firm or individual will be afforded an opportunity for a hearing if such firm or individual so requests within a stated period of time. All such hearings shall be conducted in accordance with N.J.A.C. 17:19-4.

2. Where an agency of government, other than DPMC, has imposed debarment upon a firm or an individual, DPMC may also impose a similar debarment without affording an opportunity for a hearing, provided that DPMC furnishes notice of the proposed similar debarment to that firm or individual, and affords that firm or individual an opportunity to present information in its behalf to explain why the proposed similar debarment should not be imposed, in whole, or in part.

3. Debarment shall be for a reasonable, definitely stated period of time, which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the firm or the individual is afforded an opportunity to present information in its behalf to explain why the additional period of debarment should not be imposed.

4. Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced at the discretion of the Director upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence; reversal of a conviction or judgment; actual change of ownership, management, or control; or the elimination of the causes for which the debarment was imposed.

5. A debarment may include all known affiliates of a firm or an individual, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a firm or an individual with whom the individual is affiliated, where such conduct was accomplished within the course of the individual's official duty or was effected by the knowledge or approval of the individual.

6. A firm that has been given notice of debarment by DPMC shall not be eligible for an increase in its aggregate rating or an expansion of its trade classifications pending determination of the debarment action. The debarment or the suspension of a firm shall result in the immediate forfeiture of the firm's classification.

Amended by R.2000 d.76, effective February 22, 2000.

See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout, and changed N.J.A.C. references in 6.

17:19-3.4 Causes for suspension of a firm(s) or an individual(s)

In the public interest, DPMC may suspend a firm or an individual for any cause specified in N.J.A.C. 17:19-3.1, or upon adequate evidence that such cause exists.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout, and inserted ", and may be referred to the Office of Administrative Law in the Director's discretion" at the end of the second sentence in 1.

17:19-3.5 Conditions for suspension of a firm(s) or an individual(s)

(a) The conditions for the suspension of a firm or an individual shall include the following:

1. Suspension shall be imposed only upon approval of the Director and the Attorney General, except as otherwise provided by law.
2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Director and the Attorney General and shall be rendered in the best interest of the State.
3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists.
4. In assessing whether adequate evidence exists, consideration shall be given to the credible evidence that is produced, to the existence or absence of corroboration as to important allegations, and to inferences that may properly be drawn from the existence or absence of affirmative facts.
5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 17:19-3.1(a)1 through 8 may be established by the rendering of a final judgment or judgment of conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment or by evidence that such violations of civil or criminal law did in fact occur.
6. A suspension invoked by another agency of government for any of the causes described in N.J.A.C. 17:19-3.1(a)1 through 12 may be the basis for the imposition of a concurrent suspension by DPMC, which may impose such suspension when found to be in the best interest of the State.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Substituted a reference to the Division of Property Management and Construction for a reference to the Division of Building and Construction.

17:19-3.6 Procedures, period of suspension and scope of suspension affecting the suspension of a firm(s) or an individual(s)

(a) The provisions regarding procedures, period of suspension and scope of suspension shall include the following:

1. DPMC may suspend a firm or individual or the firm's or the individual's affiliates, provided that within 10 days before the effective date of the suspension, DPMC provides such firm or individual with a written notice:

- i. Stating that a suspension has been imposed and stating its effective date;
- ii. Setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;
- iii. Stating that the suspension is for a temporary period pending the completion of an investigation and any legal proceedings that may ensue; and

iv. Indicating that, if such legal proceedings are not commenced, or the suspension removed within 60 days of the date of such notice, the firm or the individual will be given either a statement of the reasons for the suspension and an opportunity for a hearing pursuant to N.J.A.C. 17:19-4, or a statement declining to give such reasons which sets forth DPMC's position regarding the continuation of the suspension. Where DPMC suspends a firm or an individual based on a suspension by any other agency of government, DPMC shall identify same as a reason for the suspension.

2. A suspension shall not continue beyond 18 months from its effective date, unless civil or criminal action regarding the alleged violation has been initiated within that period, or unless debarment action has been commenced. When prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a firm or an individual provided that each decision to include an affiliate is made on a case-by-case basis after given due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of a firm or an individual may be imputed within the course of the firm or the individual's official duty or was effectuated by the firm or the individual with the knowledge or approval of such firm or individual.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout.

17:19-3.7 Disqualification of a firm(s) or an individual(s)

The disqualification of a firm or an individual shall be based upon the responsibility of the firm or the individual as determined by the factors set forth in N.J.A.C. 17:19-2.4.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout.

17:19-3.8 Extent of debarment, suspension or disqualification

The exclusion from State contracting by virtue of debarment, suspension or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of DPMC. When it is determined by the Director to be essential to the public interest, an exception from total exclusion may be made with respect to a particular State contract.

17:19-3.9 Prior notice by DPMC

Insofar as practicable, prior notice of any proposed debarment shall be given to the Attorney General and the State Treasurer.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout.

17:19-3.10 List of debarred, suspended or disqualified firms or individuals

DPMC shall supply to the State Treasurer a monthly list of all firms or individuals having been debarred, suspended or disqualified in accordance with the procedures in this subchapter. The list shall be available for public inspection.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

17:19-3.11 Director's authority to contract

Nothing contained in this chapter shall be construed to limit the authority of DPMC to refrain from contracting within the discretion allowed by law.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Substituted a reference to the Division of Property Management and Construction for a reference to the General Services Administration.

SUBCHAPTER 4. HEARING PROCEDURES

17:19-4.1 Hearings; subject matter; firms or individuals who may request hearings

(a) Administrative hearings before DPMC may include the following subject matter and be requested by the following firms:

1. Bid protest: A firm which has submitted a bid may request an informal hearing before the Director to protest the Director's award or rejection of a bid.

2. Evaluation or re-evaluation of classification: A firm dissatisfied with its classification, or the classification of another firm, may request an informal hearing before the Director to protest that classification.

3. Performance evaluation: A firm dissatisfied with its performance evaluation on a public work project undertaken by DPMC may request an informal hearing before the Director.

4. Suspension, disqualification or debarment: Except in the case of a suspension, a disqualification or a debarment by another agency of government, a firm or an individual may request, and shall be entitled to, a formal hearing before the Director, to challenge DPMC's proposed suspension, disqualification or debarment of the firm or individual.

5. Certain other matters of dispute that may occur relative to the activities of the DPMC: The Director, within the Director's sound discretion, may require that a firm or an individual participate in an informal hearing or a formal hearing.

6. The provisions of this section do not apply to "claims conferences" that are provided for in DPMC's consultant and construction contracts. Such "claims conferences" are convened at the Director's discretion.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout.

17:19-4.2 Requests for hearings; hearing procedures; time limitations

(a) Requests for hearings shall be made as follows:

1. Bid protest: A firm that is a participating bidder seeking a hearing shall make written request to the Director setting forth the specific grounds for challenging an award of a contract or a bid rejection. The request must be received by the Director within five calendar days after the opening of bids.

2. Evaluation or re-evaluation of classification: If a firm objects to its assigned classification or a firm objects to the classification of any other firm, a hearing may be requested pursuant to N.J.S.A. 52:35-4 and this subchapter. If a firm objects to its own classification, the request must be made, in writing, to the Director within 15 calendar days after the date of the classification notice. If a firm objects to the classification of another firm, the request must be submitted to the Director within five calendar days after the opening of bids or at least three calendar days before the proposed date of contract award, whichever date is earlier.

3. Performance evaluation: Any firm seeking to challenge a DPMC performance evaluation must make written request for a hearing to DPMC setting forth the

specific grounds for the challenge. Such request must be duly submitted within 15 calendar days after the date of receipt of written notification of the performance evaluation. Any challenge to the performance evaluation of another agency of government must be made in accordance with the other agency of government's guidelines.

4. Suspension, disqualification or debarment: Any firm seeking to challenge a suspension, disqualification or debarment must make written request to the Director setting forth the specific grounds for the challenge. Such request must be duly submitted within 15 calendar days after the date of receipt of DPMC's written notification of the suspension, disqualification or debarment.

5. Certain other matters of dispute that may occur relative to the activities of the DPMC: The Director, within the Director's sound discretion, may request that a firm participate in an informal hearing or a formal hearing at a date and time to be scheduled by the Director.

(b) Hearing procedures are as follows:

1. Informal hearings will be held, where feasible, within 15 calendar days of receipt of request. Hearings will be heard, where practicable, by an impartial hearing officer designated by the Director or by the Deputy Director. The hearing officer will prepare a report to the Director within 10 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. The hearing report will be advisory in nature and not binding on the Director. All parties will receive a copy of the hearing officer's report and have 10 calendar days to provide written comments or exceptions to the Director. After the 10-calendar day period for exceptions, the Director will issue a final decision on the matter.

2. Formal hearings will be held by the Director or an Administrative Law Judge, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq.

3. Informal hearings as convened under these rules are fact-finding for the benefit of the Director. Accordingly, the Director may request or require a hearing. Alternatively, the Director may determine that sufficient information already exists in the record so that a decision can be made without a hearing and the Director may waive the hearing and issue a final decision accordingly.

4. The Director shall determine whether a matter constitutes a contested case and shall refer any such matter for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq. The Director may also seek to refer any uncontested matters to the Office of Administrative Law for hearing pursuant to N.J.A.C. 1:1-21.

5. In an informal hearing, the Director may, in instances where public exigency exists or where there is potential for substantial savings to the State, modify or amend the time frames or any other requirements provided in N.J.A.C. 17:19-4.1 and this section. In these instances, the Director shall document, for the record, the rationale for such amendment and give adequate notice to the parties involved.

6. Notwithstanding the provisions of N.J.A.C. 17:19-4.1 and this section, in an informal hearing, the Director may delegate to the Deputy Director the ability to issue a final decision on behalf of DPMC.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted a reference to the Division of Property Management and Construction for a reference to the Division of Building and Construction in 1. and deleted "relative to evaluation of performance" at the end of 3.

17:19-4.3 Discovery procedures

In an informal hearing, the Director shall be entitled, upon request, to review all records and documents used in evidence by a complainant. Any requested records and documents shall be made available to the Director at the actual cost of reproduction.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), (b) and (f), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction: and in (b), substituted a reference to 15 calendar days for a reference to five calendar days.

SUBCHAPTER 5. CONSULTANT PREQUALIFICATION AND SELECTION PROCEDURES

17:19-5.1 Purpose

The consultant selection procedures are established to give qualified architectural, engineering, construction management or other consultant firms an open opportunity to be selected for State contracts on the basis of demonstrated competence and experience. Selection of consultants based upon a combination of technical qualifications and cost proposals enables the public interest to be best served.

17:19-5.2 Scope

(a) The principal elements of the consultant selection procedures provided for:

1. Verifying the qualifications of firms interested in providing consultant services to the State;
2. Initiating and advertising projects (which may include other solicitation requirements);
3. Screening all interested and qualified firms;

4. Evaluating procedures by selection committee; and
5. Obtaining final approval by the Director.

17:19-5.3 Definitions

The following words, terms and abbreviations, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Agency consultant” means a firm providing technical and professional services to State agencies in support of construction projects or programs to State government agencies via limited task order assignments.

“Chairperson” means the principal member of the consultant selection committee who is responsible for the management of the selection process.

“Client agency” means any State entity for which the Division of Property Management and Construction provides a consultant selection services for design and construction projects.

“Construction cost estimate” means the estimated construction cost of a specific project.

“Consultant” means an architect, engineer, construction manager, or other professional service contractor providing technical and professional services in support of a design or construction project.

“Cost proposal” means a specific fee proposal covering compensation for services as specified. Each cost proposal shall be submitted in response to a uniform request for proposal and scope of work for the specific project.

“Director” means the Director of the Division of Property Management and Construction within the State of New Jersey, Department of the Treasury, or the Director’s duly authorized representative.

“DPMC” means the Division of Property Management and Construction within the State of New Jersey, Department of the Treasury.

“Major project” means a project with an anticipated cost for services greater than that allowed by the routine contract procedure or a project of a complex or specialized nature which includes technical work requiring special licenses or certifications, new building technologies or processes, historical renovations, the potential for unforeseeable conditions which may increase the project cost significantly, the need for increased competition, and/or the need to combine several smaller components or projects to ensure effective coordination and completion of the project(s) as determined by the Director.

“Member” means an individual appointed to serve on a selection committee.

“Prequalification” means a process of reviewing information and experience data to determine the prequalification level and professional disciplines of consultant firms.

“Prequalification level” means the maximum construction cost estimate dollar level for which a consultant is prequalified. Prequalification rating levels are established and periodically adjusted by administrative procedure authorized by the Director, in accordance with this subchapter.

“Ranking” is the process of combining the ratings of all individual members of the selection committee and ordering the firms from highest to lowest total scores.

“Rating” is the numerical scoring of a consultant’s submission by an individual member of the selection committee.

“Routine project” means a project with an anticipated cost for services less than that allowed in a major project as set forth in DPMC’s policy.

“Selection committee” means the body responsible for rating, ranking and selecting consultant firms for State projects.

“Selection coordinator” means the administrator of the day-to-day committee operations and procedures, including advertising of projects, scheduling of meetings, preparing agendas, recording scores, preparing minutes of committee meetings and similar administrative responsibilities.

“Term contract” means contracts awarded to consultant(s) for a specific time period based upon the qualifications of the firm(s) and/or hourly rates for specific service categories.

“Work order” means a DPMC form utilized by a contracted agency consultant to submit proposals for approval for limited assignment task orders based on hourly rates for professional services to be provided to State government agencies.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Deleted “Administrator”; in “Agency consultant”, substituted a reference to State government agencies for a reference to client agencies; in “Director” and “Division” substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction; and rewrote “Major project” and “Work order”.

17:19-5.4 Prequalification of consultant firms

(a) Firms desiring to be considered for consultant work with DPMC shall submit prequalification forms as specified by DPMC. These forms provide comprehensive information on the management of the firm, its financial history, the type and value of past project work, licensed and technical staff, and other related information. This information is used to assist in the evaluation of firms for DPMC work and to establish the maximum construction cost estimate dollar level and professional disciplines for which the firm is

qualified. The result of this evaluation is the firm's "prequalification."

(b) Review of the firm by DPMC shall be completed within 30 calendar days of receipt of fully completed prequalification forms, and a notification of results shall be mailed to the firm within the same time period.

(c) If a prequalification is denied, the firm will be notified in writing of the reasons for denial. Measures that the firm may take in order to become qualified will be identified by the DPMC.

(d) If a firm does not agree with its prequalification as assigned by DPMC, or the denial of its prequalification, it may make a written request to the manager of DPMC's prequalification unit for reconsideration. Results of this review will be made known to the firm in writing. If the firm still does not agree with the DPMC prequalification determination, it may appeal in writing to the Director whose decision will then be final.

(e) It is the responsibility of each firm to update and keep current all prequalification forms. Major changes occurring in the firm's status shall be brought to the attention of DPMC in order that the prequalification record is current.

(f) Any firm seeking prequalification shall have at least one principal on its staff who has been engaged in active private practice with full financial responsibility for a period of two years immediately preceding its request for prequalification.

(g) Firms also are encouraged to submit brochures, pamphlets, photos and other literature for inclusion in their prequalification files that may be reviewed during the prequalification and project selection processes.

(h) The prequalification level assigned does not necessarily reflect the level on which a consultant has performed for other clients. DPMC endeavors to assign a level that is justified by applicable overall experience, length of time in business, prior experience, number of licensed New Jersey principals, size and technical staffing, and management depth. At a minimum, the consultant must have three public or private projects (two completed and one in progress) at or exceeding a specific prequalification dollar level in the discipline requested prior to approval for that prequalification level.

(i) Firms may increase their technical qualification for a specific project by entering into joint-ventures with other firms. Each individual firm of the joint venture must be separately prequalified. One of the firms shall have been prequalified at the level stipulated for the project.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (d), rewrote the first sentence.

17:19-5.5 Public notification

(a) DPMC may publicly solicit the interest of prequalified firms to provide professional services by advertising in one or more of the following methods:

1. In design and construction publications and trade journals covering the construction industry in New Jersey;
2. In newspapers;
3. By written notice to New Jersey professional societies;
4. By use of direct mailings to prequalified firms; or
5. Electronic means.

(b) Public notification shall include instructions to specify any special information or experience that a firm must submit by the date and time specified in the advertisement. Failure to respond within the time limits noted in the advertisement shall be cause for rejection of a firm's application.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).
Inserted (a)5.

17:19-5.6 Set-aside program; minority-owned and female-owned businesses

DPMC will conform to the provisions of N.J.S.A. 52:32-17 et seq. and N.J.A.C. 17:14 in the award of contracts and subcontracts to eligible minority-owned and women-owned businesses.

17:19-5.7 Major project selection procedures

(a) The selection process will be initiated upon the receipt by the DPMC of a request from a State client agency for consultant services. The written request shall include a description of the scope of work of the project, the time period in which the design and construction is to be completed and a current working cost estimate (if applicable) of the proposed project for both design and the construction of the project.

(b) A selection committee will be established to select a consultant for that specific project. The selection committee shall develop the rating schedule and criteria for the project. The rating criteria will be part of the public notice. The rating criteria for each project will generally include the following: firm's experience on projects of a similar size and nature; project team experience; project approach; understanding of project needs; project schedule, budget and cost estimating; and/or other criteria as determined to be appropriate.

(c) The rating process may include submission of specific project questionnaire forms, technical proposals and interviews.

(d) Each individual member of the selection committee will evaluate all submissions based upon specific criteria and prepare a rating. The selection coordinator shall compile all ratings and prepare a ranking. The chairperson shall call for a meeting of the selection committee to review the ranking and shortlist the appropriate number of firms for further consideration. Additional technical and/or organizational information may be requested from the firms before a final ranking is prepared.

(e) When the selection committee completes the ranking, cost proposals shall be solicited from the highest ranked firms.

(f) Site visits, pre-interview conferences and pre-proposal conferences may be scheduled. Attendance shall be mandatory when so stipulated.

(g) Sealed cost proposals will be accepted on a pre-determined date and time by the selection coordinator. The selection committee will meet to open and review the cost proposals. Upon completion of the review, the selection committee may begin negotiations with the highest ranked firm or firms for a cost proposal that is fair and reasonable to the State. As required, the selection committee may request additional meetings, additional technical, organizational or cost data from any of the firms. If a satisfactory conclusion cannot be reached with the highest ranked firm or firms, the selection committee may negotiate with the next highest ranked firm or firms.

(h) The selection committee shall have the responsibility to recommend to the Director the selection of the firm that is the highest ranked and whose cost proposal is fair and reasonable to the State.

(i) The rating, ranking, negotiations and cost proposals of all firms, as well as all discussions and correspondence, relating to a consultant selection remain confidential until the contract is awarded.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), inserted a reference to consultant services at the end of the first sentence; and rewrote (b) and (g) through (i).

17:19-5.8 Routine contracts

(a) Prequalified firms desiring to perform certain consultant services for the DPMC or its client agencies may submit proposals for routine projects.

(b) The selection process shall be initiated upon the receipt by the DPMC of a request from a State client agency for consultant services that meet the criteria for a routine project. Upon the receipt or development of a project scope of work, DPMC shall create a selection committee for the purpose of selecting a Professional Services Consultant for the project. DPMC and/or the selection committee shall develop the specific rating and ranking criteria to be used for the selection.

(c) DPMC shall publicly advertise each routine contract in newspapers and/or electronic only means before the random selection of firms for that contract. The advertisement/notice shall state the date on which DPMC will be randomly selecting, from an appropriate pool of its prequalified consultants, those firms from which proposals will be solicited. The advertisement/notice shall specify the prequalification discipline and prequalification level required for the project and the criteria DPMC will use in the rating and ranking of the proposals submitted from interested firms.

(d) From the pool of prequalified consultants specified in the advertisement, DPMC will perform a computer-generated random selection of firms and solicit technical proposals and sealed cost proposals from the list of randomly generated firms.

(e) Pre-proposal conferences, site visits and interviews may be scheduled, as necessary.

(f) Technical proposals shall be rated and ranked in accordance with the specific evaluation criteria for the project.

(g) The selection process regarding the sealed cost proposals will be in accordance with the major project selection procedures, N.J.A.C. 17:19-5.7.

(h) The selection committee shall have the responsibility to recommend to the Director the selection of the firm that is the highest ranked and whose cost proposal is determined to be fair and reasonable to the State.

(i) Nothing in these rules shall be interpreted to prohibit DPMC from utilizing the major consultant election procedure for any and all engagements.

17:19-5.9 Term contracts

(a) Firms desiring to perform certain consultant services for DPMC may submit proposals for term contracts as required. Term contracts shall be awarded by the Director to consultants who have complied with the terms and conditions of the term contract request for proposal and have been determined by the selection committee to be the best qualified.

(b) Term contracts may also be used to provide consultant services to client agencies in specific service categories for a specific time period.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (f), changed N.J.A.C. reference; and rewrote (g).

17:19-5.10 Term contract project selection procedures

(a) Term contracts may be used by DPMC to serve a variety of consultant needs in accordance with DPMC's duties to administer DPMC's construction portfolio. The initiation of the selection process may be in accordance with the major or the routine project selection procedures, pursuant to N.J.A.C. 17:19-5.8(a).

(b) Firms are selected based upon technical qualifications and cost.

(c) Pre-proposal conference, site visits and interviews may be scheduled.

(d) Technical proposals shall be rated and ranked in accordance with the specific technical criteria for the project.

(e) The selection process regarding the sealed cost proposals shall be in accordance with the major project selection procedures, N.J.A.C. 17:19-5.7(g), except that costs may be based upon hourly daily rates and/or other methods for determining costs over a specific time period.

(f) The selection committee shall have the responsibility to recommend to the Director the selection of the firm that is the highest ranked and whose costs are fair and reasonable to the State.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).
Rewrote (a).

17:19-5.11 Agency consultant program

(a) The agency consultant program provides a selection process for architectural, engineering or other consultant services to assist client agencies and DPMC in the planning of construction projects, developing scopes of work, investigating construction-related problems, designing small projects and administering small construction projects.

(b) DPMC may delegate to client agencies the authority to award projects for consultants to perform professional services for construction projects. The client agency shall rate and rank the technical submissions according to selection procedures established by DPMC policy.

(c) An agency consultant fee limit for each work order shall be established by DPMC, including a fee limit threshold per year.

(d) The client agency shall monitor and manage all activities of the consultant. Financial data and project files shall be available to DPMC's auditors.

17:19-5.12 Client agency management of design/construction projects

(a) DPMC may delegate authority to client agencies to manage design and/or construction phases of a project with a stipulated construction cost estimate.

(b) The selection of firms to submit technical and cost proposals shall be in accordance with the major project selection procedures, pursuant to N.J.A.C. 17:19-5.7, or routine contracts selection procedures, pursuant to N.J.A.C. 17:19-5.8.